

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RYAN J. BONIVERT,

Plaintiff,

v.

CITY OF CLARKSTON, et al.,

Defendants.

NO: 2:14-CV-0056-TOR

ORDER RE: MOTIONS FOR  
PARTIAL SUMMARY JUDGMENT  
AND DISMISSAL

BEFORE THE COURT are the following motions: Defendants Ken Bancroft, Jane Doe Snyder, and Jane Doe Snyder's Motion for Partial Summary Judgment Dismissal (ECF No. 26); Defendants Joel Hastings, Jane Doe Combs and Jane Doe Purcell's Motion for Partial Summary Judgment Dismissal (ECF No. 29); Plaintiff's Motion to Dismiss Defendants Joel Hasting, John H. Singleton, Ken Bancroft, and Jane Doe Snyder (ECF No. 32); and Plaintiffs' Motion to File Amended Complaint (ECF No. 36). These matters were heard with oral argument on November 13, 2014. Samuel T. Creason and Theodore O. Creason appeared on

1 behalf of Plaintiff. Thomas P. Miller, Ann E. Trivett, and Frieda K. Zimmerman  
2 appeared on behalf of various Defendants. The Court has reviewed the briefing  
3 and the record and files herein and heard from counsel, and is fully informed.

#### 4 **BACKGROUND**

5 Plaintiff filed his initial Complaint in this action on February 25, 2014,  
6 alleging that Defendants violated 42 U.S.C. § 1983 when they, *inter alia*, entered  
7 and searched Plaintiff's home without a warrant, applied excessive force, and  
8 subjected Plaintiff to degrading treatment while in custody. ECF No. 1. Plaintiff  
9 has sued several County of Asotin and City of Clarkston officials in their  
10 individual capacities, as well as their spouses. *Id.* Plaintiff has also sued the  
11 County of Asotin and the City of Clarkston. *Id.*

12 Currently before the Court are several motions regarding which individuals  
13 are properly named as defendants in this action. Defendants move to dismiss, *with*  
14 prejudice, (1) Defendants Ken Bancroft and Joel Hastings on the ground that  
15 Plaintiff's claims against these defendants are duplicative and redundant of  
16 Plaintiff's claims against the City and County; and (2) Defendant Jane Does  
17 Snyder (spouse of Gary Snyder), Snyder (spouse of Joseph Snyder), Purcell  
18 (spouse of Paul Purcell), and Combs (spouse of Daniel Combs) on the ground that  
19 these spouses had no involvement in the incident that gave rise to this action and  
20 thus are improper defendants under section 1983. ECF Nos. 26, 29.

1 Plaintiff voluntarily moves to dismiss, *without* prejudice, Defendants Ken  
2 Bancroft, Joel Hastings, Jon H. Singleton,<sup>1</sup> and Jane Doe Snyder (spouse of Gary  
3 Snyder). ECF No. 32. Plaintiff also moves to amend his Complaint to name the  
4 following parties, previously only identified as Does: Claudia A. Combs, Teresa R.  
5 Purcell, Jennifer L. Snyder, Deputy Shawn Rudy, and Deputy Grimm. ECF No.  
6 36.

## 7 DISCUSSION

### 8 A. Motions for Partial Summary Judgment and Voluntary Dismissal

#### 9 1. Legal Standard for Summary Judgment

10 Summary judgment may be granted to a moving party who demonstrates  
11 “that there is no genuine dispute as to any material fact and that the movant is  
12 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party  
13 bears the initial burden of demonstrating the absence of any genuine issues of  
14 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then  
15 shifts to the non-moving party to identify specific genuine issues of material fact  
16 which must be decided by a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
17 242, 256 (1986). “The mere existence of a scintilla of evidence in support of the  
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19 <sup>1</sup> Previously, and incorrectly, identified as John H. Singleton in Plaintiff’s initial  
20 Complaint and Motion to Dismiss.

1 plaintiff's position will be insufficient; there must be evidence on which the jury  
2 could reasonably find for the plaintiff." *Id.* at 252.

3 For purposes of summary judgment, a fact is "material" if it might affect the  
4 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any  
5 such fact is "genuine" only where the evidence is such that a reasonable jury could  
6 find in favor of the non-moving party. *Id.* In ruling upon a summary judgment  
7 motion, a court must construe the facts, as well as all rational inferences therefrom,  
8 in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372,  
9 378 (2007). Only evidence which would be admissible at trial may be considered.  
10 *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002).

## 11 2. Legal Standard for Voluntary Dismissal

12 Pursuant to Federal Rule of Civil Procedure 41(a)(2), "an action may be  
13 dismissed at the plaintiff's request only by court order, on terms that the court  
14 considers proper . . . Unless the order states otherwise, a dismissal under this  
15 paragraph (2) is without prejudice." Fed. R. Civ. P. 41(a)(2). "A district court  
16 should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a  
17 defendant can show that it will suffer some plain legal prejudice as a result." *Smith*  
18 *v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). The decision to grant or deny a  
19 motion pursuant to Rule 41(a)(2) is within the sound discretion of the court. *Sams*  
20 *v. Beech Aircraft Corp.*, 625 F.2d 273, 277 (9th Cir. 1980). District courts have

1 broad discretion in deciding whether to dismiss actions *with* or *without* prejudice.  
2 *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1058  
3 (9th Cir. 2011). However, “[a] dismissal under Rule 41(a)(2) normally is *without*  
4 prejudice, as explicitly stated in the rule,” *Smith*, 263 F.3d at 976 (emphasis  
5 added).

6 3. Defendant Jon H. Singleton

7 Plaintiff moves to voluntarily dismiss Defendant Singleton without  
8 prejudice. ECF No. 32. Defendants offer no objection. Therefore, this Court  
9 dismisses Defendant Singleton *without* prejudice.

10 4. Defendants Ken Bancroft & Joel Hastings

11 Defendants move to dismiss Defendants Bancroft and Hastings with  
12 prejudice on the ground that Plaintiff’s claims, similarly alleged against the County  
13 of Asotin and City of Clarkston, are duplicative. ECF Nos. 26 at 2-3; 29 at 2.  
14 Plaintiff moves to dismiss Defendants Bancroft and Hastings *without* prejudice  
15 because discovery has not yet been completed and there exists the possibility that  
16 Defendants Bancroft and Hastings could be liable on other potential claims. ECF  
17 Nos. 32; 33 at 3.

18 This Court finds Defendants Bancroft and Hastings should be dismissed  
19 without prejudice. Although Defendants aptly note that Plaintiff’s current claims  
20 against these Defendants are duplicative of Plaintiff’s claims against the City and

County, *see Hafer v. Melo*, 502 U.S. 21, 25 (1991), this Court is persuaded by Plaintiff's response. Plaintiff's counsel contacted Defendants' counsel in June 2014, voicing Plaintiff's intention to voluntarily dismiss Defendants Bancroft and Hastings after conducting all necessary depositions. ECF Nos. 34 at 2; 34-1. As Plaintiff's counsel proposed, Plaintiff would either amend his Complaint or voluntarily dismiss Defendants Bancroft and Hastings depending on what was uncovered during depositions. ECF No. 34-1. After all, the deadline for amending pleadings in this case was not until October 10, 2014. ECF No. 22. Defendants did not raise any objection. ECF No. 33 at 5. Instead, Defendants filed their motions seeking to dismiss, with prejudice, Defendants Bancroft and Hastings on September 9 and September 18, respectively—weeks before the amendment deadline, one day before the deposition of Defendant Bancroft, and in the midst of other depositions for this matter. *Id.* Accordingly, this Court, in its broad discretion, dismisses Defendants Bancroft and Hastings *without* prejudice.

5. Defendant Jane Does

Defendants move to dismiss Defendant Jane Does Snyder (Joseph), Snyder (Gary), Purcell, and Combs with prejudice on the ground that the spouses of individually named defendants are not liable under section 1983. ECF Nos. 26 at 6-8; 29 at 3. Plaintiff opposes dismissing Defendant Jane Does Snyder (Joseph), Purcell, and Combs on the ground that, as part of the marital community of the

1 tortfeasor spouses, they are subject to liability for a judgment in this case and have  
2 a statutory right to defend that community. ECF No. 33 at 6-11. Plaintiff moves to  
3 dismiss Defendant Jane Doe Snyder (ex-spouse of Gary Snyder), without  
4 prejudice, in light of a recent disclosure that Gary Snyder is divorced. ECF Nos.  
5 32; 33 at 6 n.1.

6 In the State of Washington, whether a marital community is liable for the  
7 torts of a spouse depends on whether the act either “(1) results or is intended to  
8 result in a benefit to the community or (2) is committed in the prosecution of the  
9 business of the community.” *Clayton v. Wilson*, 168 Wash.2d 57, 63 (2010)  
10 (quoting *LaFramboise v. Schmidt*, 42 Wash.2d 198, 200 (1953)); *see also Kilcup v.*  
11 *McManus*, 64 Wash.2d 771, 781 (1964) (“The community should be and is liable  
12 for wrong inflicted by the husband in the execution of his public office or  
13 employment occurring through his ignorance, carelessness or mistaken ideas of his  
14 official powers and duties.”). “Torts which can properly be said to be done in the  
15 management of community business, or for the benefit of the community, will  
16 remain community torts with the community and the tortfeasor separately liable.”  
17 *deElche v. Jacobsen*, 95 Wash.2d 237, 245 (1980).<sup>2</sup> When a non-tortfeasor spouse

18 <sup>2</sup> On the other hand, when the tort is not committed for the benefit of the  
19 community or during prosecution of community business, the tortfeasor is primarily  
20 liable and the plaintiff may only recover from the tortfeasor’s one-half interest in

1 is joined in the action but there are no allegations of personal involvement, the  
 2 entry of judgment would run against the marital community rather than against the  
 3 non-tortfeasor spouse as an individual. *See Delano v. Tennent*, 138 Wash. 39, 47  
 4 (1926); *Douglas Nw., Inc. v. Bill O'Brien & Sons Constr., Inc.*, 64 Wash.App. 661,  
 5 689 (1992). Although a non-tortfeasor spouse does not necessarily need to be  
 6 named and served,<sup>3</sup> past practice strongly suggests the procedure is permissive, *see*  
 7 *e.g., Alexander v. Sanford*, 181 Wash.App. 135, 183 (2014) (finding no authority  
 8 prohibiting the practice of naming spouses as codefendants in a complaint so as to  
 9 create community liability), if not also encouraged.<sup>4</sup>

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10 marital property if the separate property is insufficient to satisfy the judgment.

11 *deElche*, 95 Wash.2d at 246.

12 <sup>3</sup> RCW 4.08.040 states the following regarding joining spouses as defendants:

13  
 14 If the spouses or the domestic partners are sued together, either or  
 15 both spouses or either or both domestic partners may defend, and if  
 16 one spouse or one domestic partner neglects to defend, the other  
 17 spouse or other domestic partner may defend for the nonacting spouse  
 or nonacting domestic partner also. Each spouse or each domestic  
 partner may defend in all cases in which he or she is interested,  
 whether that spouse or that domestic partner is sued with the other  
 spouse or other domestic partner or not.

18 <sup>4</sup> Washington Practice Series states the following regarding joining a non-tortfeasor  
 19 spouse as a defendant when seeking to enter judgment against community  
 20 property:



1 Here, this Court finds permissive Plaintiff's inclusion of Jane Does Purcell,  
2 Combs, and Snyder (Joseph), and their respective martial communities, as  
3 defendants in this action. Plaintiff has alleged a basis for individual liability  
4 against Defendants Purcell, Combs, and Joseph Snyder, arising out of their  
5 employment with the City of Clarkston and County of Asotin. Because these acts  
6 allegedly arose during Defendants' employ, an activity presumptively intended to  
7 benefit their respective marital communities, those communities can be held liable  
8 should judgment be entered against each individual Defendant. *See deElche*, 95  
9 Wash.2d at 245046; *Kilcup*, 64 Wash.2d at 781. Thus, although not mandatory,  
10 the Defendants' spouses, and the marital communities of which they are a part, are  
11 properly joined in this action for the sole purpose of entering judgment against  
12 their marital communities.

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13  
14 An action may be commenced against a married person, and the  
15 litigation is presumed to be against the community. The named spouse  
16 has the authority to defend on behalf of the community. The resulting  
17 judgment is presumed to be a judgment against the community,  
18 though the presumption may be overcome by showing that the  
19 judgment is based solely on the separate obligation of one spouse.  
*To be cautious, and to avoid any question about whether the action is  
intended to be against the community, most plaintiff's attorneys will  
simply name both spouses as defendants from the outset, in all cases  
against married persons.* If one spouse's name is unknown, he or she  
can be designated John Doe or Jane Doe.

20 14 Wash. Prac., Civil Procedure § 11:19 (2d ed.) (emphasis added).

1 Accordingly, the Court declines to dismiss Defendant Jane Does Snyder  
2 (Joseph), Purcell, and Combs. Further, because Plaintiff still may be able to seek  
3 judgment against the marital community previously comprised of Defendant Gary  
4 Snyder and Jane Doe Snyder, this Court dismisses all claims against Defendant  
5 Jane Doe Snyder (former spouse Gary) *without* prejudice.

## 6 **6. Motion to Amend**

7 Rule 15(a) provides that, except in circumstances not present here, “a party  
8 may amend its pleading only with the opposing party’s written consent or the  
9 court’s leave,” which “[t]he court should freely give . . . when justice so requires.”  
10 Fed. R. Civ. P. 15(a)(2). The Ninth Circuit has directed that this policy be applied  
11 with “extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,  
12 1051 (9th Cir. 2003) (citation omitted). In ruling upon a motion for leave to  
13 amend, a court must consider whether the moving party acted in bad faith or  
14 unduly delayed in seeking amendment, whether the opposing party would be  
15 prejudiced, whether an amendment would be futile, and whether the movant  
16 previously amended the pleading. *United States v. Corinthian Colleges*, 655 F.3d  
17 984, 995 (9th Cir. 2011). “Absent prejudice, or a strong showing of any of the  
18 remaining [factors], there exists a *presumption* under Rule 15(a) in favor of  
19 granting leave to amend.” *C.F. ex rel. Farnan v. Capistrano Unified School Dist.*,  
20 654 F.3d 975, 984 (9th Cir. 2011) (quoting *Eminence Capital*, 316 F.3d at 1051).

1 Plaintiff filed his initial Complaint in this action on February 24, 2014. ECF  
2 No. 1. Pursuant to this Court's original Scheduling Order, the deadline to amend  
3 the pleadings or add parties was September 10, 2014. ECF No. 17. However, the  
4 parties subsequently filed a joint motion to extend this deadline, ECF No. 20,  
5 which the Court granted. Pursuant to the amended Scheduling Order, the deadline  
6 to amend the pleadings or add parties was October 10, 2014. ECF No. 22.

7 Plaintiff timely seeks leave to amend his Complaint to identify several John  
8 and Jane Does who were either previously identified as spouses to and in a marital  
9 community with named Defendants or were unnamed law enforcement officers of  
10 Asotin County Sheriff's Office and Clarkston Police Department. ECF No. 36 at

11 2. After conducting discovery, Plaintiff has identified the following Doe  
12 defendants:

- 13 1. Claudia A. Combs, previously identified as Jane Doe Combs;
- 14 2. Teresa R. Purcell, previously identified as Jane Doe Purcell;
- 15 3. Jennifer L. Snyder, previously identified as Jane Doe Snyder (spouse  
16 Joseph);
- 17 4. Deputy Shawn Rudy, previously identified as John Doe I; and
- 18 5. Deputy Grimm, previously identified as John Doe II.

19 *Id.* at 2-3.

1 This Court finds the factors weigh in favor of amendment. First, this Court  
2 finds no evidence of bad faith or undue delay. Second, Defendants can hardly  
3 claim prejudice considering Plaintiff's pending motion merely seeks to identify the  
4 previously named John and Jane Does. Third, Plaintiff has not previously  
5 amended his Complaint. Finally, regarding Defendants' sole challenge to  
6 amendment, Plaintiff has alleged sufficient facts to overcome the futility analysis.  
7 Because Plaintiff is merely seeking to name parties previously only identified as  
8 Does, this Court does not find the proposed amendment futile. Accordingly, this  
9 Court, within its wide discretion and pursuant to the liberal policy of granting leave  
10 to amend, finds amendment here to be proper.

11 **ACCORDGINLY, IT IS HEREBY ORDERED:**

- 12 1. Defendants Ken Bancroft, Jane Doe Snyder, and Jane Doe Snyder's  
13 Motion for Partial Summary Judgment Dismissal (ECF No. 26) is  
14 **DENIED**
- 15 2. Defendants Joel Hastings, Jane Doe Combs and Jane Doe Purcell's  
16 Motion for Partial Summary Judgment Dismissal (ECF No. 29) is  
17 **DENIED.**
- 18 3. Plaintiff's Motion to Dismiss Defendants Joel Hastings, John H.  
19 Singleton, Ken Bancroft, and Jane Doe Snyder (ECF No. 32) is  
20

1           **GRANTED.** Defendants Hastings, Singleton, Bancroft, and Jane Doe  
2           Snyder (ex-spouse of Gary Snyder) are dismissed *without* prejudice.


3           4. Plaintiffs' Motion to File Amended Complaint (ECF No. 36) is

4           **GRANTED.** Plaintiff is directed to file and serve his Amended  
5           Complaint forthwith.

6           The District Court Executive is hereby directed to enter this Order, provide  
7           copies to counsel, and adjust the caption of the case accordingly.

8           **DATED** November 17, 2014.



  
THOMAS O. RICE  
United States District Judge